

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:

APPLICATION OF PARTICIPACOES MORRO
VERMELHO S.A. and PMV INTERNATIONAL INC.

Petitioners.

Case No. _____

**EX PARTE APPLICATION OF PARTICIPACOES MORRO
VERMELHO S.A. and PMV INTERNATIONAL INC. FOR AN
ORDER TO TAKE DISCOVERY PURSUANT TO 28 U.S.C. § 1782**

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Based on the accompanying memorandum of law, the Declaration of Francisco Lopes, dated September 11, 2019, including the exhibits annexed thereto, the Declaration of Francisco Teixeira da Silva Proenca de Carvalho, dated September 10, 2019, the Declaration of Renata Horovitz Kalim, dated September 11, 2019, and the Declaration of Nicholas Arons, dated September 13, 2019 (the “Arons Declaration”), including the exhibits annexed thereto, Participações Morro Vermelho S.A. (“PMV S.A.”) and PMV International Inc. (“PMV Intl.”) (“Petitioners”) respectfully petition this Court for an order pursuant to 28 U.S.C. § 1782 (“Section 1782”) authorizing them to serve subpoenas on and take discovery from Citibank, N.A. (“Citibank”) and Morgan Stanley (the “New York Banks”) for use in foreign proceedings in Portugal, Brazil, and the British Virgin Islands (“BVI”) (the “Application”).

Petitioners, the complainants in ongoing criminal proceedings in Brazil and Portugal against a former director of PMV S.A., Luciano Mestrich Motta (“Motta”), seek an order authorizing discovery of a limited set of bank records from certain financial institutions within this Court’s jurisdiction for use in these, and other contemplated foreign proceedings pursuant to Section 1782. As set forth in more detail in the accompanying memorandum of law, Petitioners satisfy each of the three statutory requirements of Section 1782. *First*, Citibank and Morgan Stanley are each headquartered and therefore reside within the Southern District of New York. *Second*, the bank records sought by Petitioners are “for use” in the pending criminal proceedings in Portugal and Brazil and the contemplated forthcoming civil proceedings in Portugal, Brazil, and BVI. *Third*, Petitioners qualify as “interested persons” under Section 1782, as they are the complainants and prosecutorial assistants in the criminal proceedings pending in Portugal and Brazil, and will also be parties in the forthcoming civil proceedings in Portugal, Brazil, and the BVI.

In addition, as set forth in more detail in the accompanying memorandum of law, the four discretionary factors established in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004) each weigh in favor of granting Petitioners' Application. *First*, the New York Banks are not participants in the pending criminal proceedings and will not be parties in the forthcoming civil proceedings. *Second*, Petitioners are not aware of any reason why the applicable foreign tribunals or governmental bodies would be unreceptive to the discovery sought by this Application; to the contrary, bank records are routinely used in cases around the world relating to claims of fraud and embezzlement. *Third*, Petitioners are the victims of fraud, embezzlement, deceit and breaches of fiduciary duties owed to them, among other injurious conduct, and seek this discovery in good faith to obtain the relief they seek in the various foreign proceedings. Thus, this Application is not an attempt to harass or circumvent foreign proof-gathering restrictions or other policies. Finally, Petitioners' discovery requests, which are set forth in the proposed subpoenas attached as Exhibits 1 and 2 to the Arons Declaration, are narrowly tailored to the bank records and communications that are relevant to the claims in the various foreign proceedings, and are therefore not unduly intrusive or burdensome.

Accordingly, and for the reasons set forth in the accompanying memorandum of law, Petitioners respectfully request that the Court grant Petitioners' Application *ex parte* and issue the Proposed Order attached as Exhibit 3 to the Arons Declaration, which will grant them permission to serve the New York Banks with the subpoenas attached as Exhibits 1 and 2 to the Arons Declaration.

Dated: New York, New York
September 13, 2019

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